



17 OCT 2002

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

National Renewable Energy Laboratory  
1617 Cole Boulevard  
Golden, CO 80401

In re Application of  
Adney et al.  
Application No. 10/031,496  
Filing Date: 14 January 2002  
Atty. Docket No.: NREL 99-45  
For: Cellobiohydrolase I Gene  
And Improved Variants

COMMUNICATION

This application is before the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371.


Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). "[I]f there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted under 35 U.S.C. 111(a)." MPEP 1893.03(a). See also 37 CFR 1.495(g).

The "Transmittal Letter To The United States Designated/Elected Office..." filed on 14 January 2002 indicated that this application was intended as a national stage filing under 35 U.S.C. 371. However, a second transmittal letter, a "Utility Patent Application Transmittal," was also filed on 14 January 2002. The "Utility Patent Application Transmittal" letter specifically indicated that it was "Only for new nonprovisional applications under 37 CFR 1.53(b)." This served as an indication that treatment of the accompanying papers under 35 U.S.C. 111(a) was desired, rather than processing under 35 U.S.C. 371. In view of these conflicting instructions, there was no clear indication that the papers were filed under 35 U.S.C. 371 rather than 35 U.S.C. 111. As such, the processing of the papers as an application filed under 35 U.S.C. 111 rather than 35 U.S.C. 371 is proper. See 37 CFR 1.495(g).

In view of the fact that this application is an application under 35 U.S.C. 111, the present application did not become abandoned for failure to provide the basic national fee by 30 months pursuant to 37 CFR 1.495. Accordingly, the Decision On Petition Under 37 CFR 1.137(b) mailed on 08 August 2002 is hereby **VACATED**. The petition fee will be refunded in due course.

This application is being forwarded to the National Stage Processing Division to (1) remove the Article 20 papers from the application file and (2) correct USPTO database records to reflect that the instant application is **not** the U.S. national stage of PCT/US00/19007. Thereafter, the application will be forwarded to the Office of Initial Patent Examination (OIPE) for processing as an application filed under 35 U.S.C. 111 (a).

  
Boris Milef  
PCT Legal Examiner  
PCT Legal Office

  
George Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (703) 308-6721  
Fax: (703) 308-6459